

CONTRACTOR AND SUBCONTRACTOR COST OR PRICING DATA, OR INFORMATION OTHER THAN COST OR PRICING DATA AND PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA

(a) Contractor Cost or Pricing Data.

(1) Whenever the negotiated price of the basic Contract, or the negotiated price of any change, or other modification to this Contract is expected to exceed \$550,000, the Contractor agrees to furnish the Institute certified cost or pricing data, unless a waiver applies or a determination is made that an exception applies (the price is based on adequate price competition, prices set by law or regulation, or the contract is for a commercial item). Whenever certified cost or pricing data are required, the Contractor agrees to furnish the data in the format requested by JPL or if JPL does not so specify, per Table 15-2 of FAR 15.408 and agrees to submit the JPL certificate form JPL 2496 or equivalent as soon as practicable after agreement on price but before award.

(2) Exceptions to Cost or Pricing Data.

(A) (i) Basic Contracts. In lieu of submitting cost or pricing data for the basic Contract, offerors may submit a written request for exception by submitting the information described under paragraph (B), below.

(ii) Contract Modifications. In lieu of submitting cost or pricing data for modifications under this Contract, for price adjustments expected to exceed \$550,000 on the date of the agreement on price or the date of the award, whichever is later, the Contractor may submit a written request for exception by submitting the information described under paragraph (B), below.

(iii) JPL may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

(B) The relevant part of the following information is to be submitted when requesting an exception:

(i) Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) For a commercial item exception, the offeror shall submit, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price for this acquisition. Such information may include:

a. For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.

b. For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.

c. For items included on an active Federal Supply Service Multiple Award Schedule or any other Federal Government contract, proof that an exception has been granted for the schedule item.

(iii) Information on modifications of contracts or subcontracts for commercial items. If (i) the original Contract or subcontract was granted an exception from cost or pricing data requirements because the price agreed upon was based on adequate price competition, or prices set by law or regulation, or was a contract or subcontract for a commercial item; and (ii) the modification (to the Contract or subcontract) is not exempted based on one of these exceptions, then the Contractor may provide information to establish that the modification would not change the Contract or subcontract from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

(C) The Offeror/Contractor grants JPL or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data

relevant solely to the Offeror's/Contractor's determination of the prices to be offered in the catalog or marketplace.

(b) Subcontractor Cost or Pricing Data.

- (1) Before awarding any subcontract expected to exceed \$550,000 when entered into, or before pricing any subcontract modification involving a pricing adjustment expected to exceed \$550,000, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the subcontract or modification is eligible for an exception listed in paragraph (a), above.
- (2) The requirement for obtaining certified cost or pricing data with respect to any subcontract change or other modification does not apply to any subcontract change or modification, at any tier, where this Contract is a firm fixed-price or firm fixed-price with escalation contract unless such change or other modification results from a Contract change or other modification to this Contract, nor does it apply to a subcontract change or other modification, at any tier, where this Contract is not firm fixed-price or firm fixed-price with escalation, unless the price for such change or modification becomes reimbursable under this Contract.
- (3) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR Part 15, and any corresponding implementing or supplementing provisions in the NFS, that, to the best of its knowledge and belief, the data submitted under subparagraph (b)(1) above were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.
- (4) In each subcontract that exceeds \$550,000 when entered into, the Contractor shall insert either:
 - (A) The substance of this Article, including this paragraph (4), if paragraph (b)(1) above requires submission of cost or pricing data for the subcontract; or
 - (B) The substance of the clause at FAR 52.215-13, "Subcontractor Cost or Pricing Data - Modifications," including any corresponding implementing or supplementing provisions in the NFS.

(c) Price Reduction for Defective Cost or Pricing Data.

- (1) If any price, including profit or fee, negotiated in connection with this Contract, or any cost reimbursable under this Contract, was increased by any significant amount because (i) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (ii) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (iii) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the Contract shall be modified to reflect the reduction.
- (2) Any reduction in the Contract price under paragraph (1) above due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (i) the actual subcontract or (ii) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.
- (3) (A) If the Contracting Officer determines under paragraph (1) of this Article that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:
 - (i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the Contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.
 - (ii) The Institute should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of JPL.
 - (iii) The Contract was based on an agreement about the total cost of the Contract and there was no agreement about the cost of each item procured under the Contract.
 - (iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.
- (B) (i) Except as prohibited by subdivision (c)(3)(B)(ii) of this Article, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a Contract price reduction if:

- a. The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and
 - b. The Contractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data and that the data were not submitted before such date.
- (ii) An offset shall not be allowed if:
 - a. The understated data was known by the Contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or
 - b. The Government proves that the facts demonstrate that the Contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.
- (4) In the event of a disagreement between the Contracting Officer and the Contractor with respect to a question of fact involved in the Contracting Officer's determination to reduce the price of this Contract, the Contractor may, subject to the prior approval of the Institute, which approval will not be unreasonably withheld, process such disagreement as a dispute to the extent that it may be entitled to do so under the provisions of the Prime Contract.
- (d) If any reduction in the Contract price under this Article reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall indemnify the Institute for costs incurred by the Institute involved in repayments to the Government resulting from the Contractor's defective pricing including:
 - (1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Institute at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
 - (2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent.